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OFFICE OF PETITIONS

In re Application of :
Yoshihara et al. : LETTER REGARDING
Application No. 10/762,577 : PATENT TERM ADJUSTMENT
Filed: January 23, 2004 :
Attorney Docket No. :
016886-0190 :
:

This letter is in response to the "LETTER (UNDER A GENERAL OBLIGATION OF CANDOR AND GOOD FAITH IN PRACTICE BEFORE THE OFFICE)," filed on July 14, 2008. Applicants request that the initial determination of patent term adjustment under 35 USC 154(b) be reduced by one (1) day from nine hundred forty-three (943) days to nine hundred forty-two (942) days.

The request for review of patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) at the time of the mailing of the Notice of Allowance is 942 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 2, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 USC 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is nine hundred forty-three (943) days. The instant request for review of patent term adjustment was timely filed.¹

Applicants state that the PTA calculation appears to be longer than appropriate, in that the patent term adjustment should be 942 days rather than 943 days.

¹ PALM Records indicate that the issue fee was paid on July 14, 2008.

A review of the record reveals that Applicants should have been assessed an additional delay of one (1) day. On November 15, 2007, a non-final office action was mailed. On March 11, 2008, three (3) months and 25 days after the mailing of the non-final office action, applicants filed a response. The Office, however, treated the response as filed on March 10, 2008, and assessed a reduction of 24 days of patent term adjustment. The 24 day reduction is being removed, and a 25 days reduction is being entered.

37 CFR 1.704(b) states, in pertinent part that:

An applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

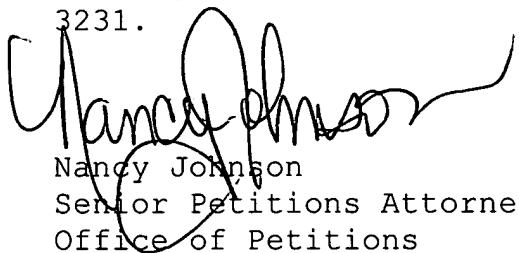
Therefore, Applicants should have been assessed a reduction in patent term adjustment for the period of delay from February 15, 2008, (three (3) months from the date that the non-final rejection was mailed on November 15, 2007), to March 11, 2008 (the date the reply was filed), or 25 days.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is nine hundred forty-two (942) days (967 days of Office delay, reduced by 25 days of Applicant delay).

As this letter was submitted as an advisement to the Office of an error in Applicant's favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks Applicants for their good faith and candor in bringing this matter to the attention of the Office.

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Encl: Revised PALM Calculation

Day : Wednesday

Date: 1/7/2009

Time: 18:09:46

PALM INTRANET**PTA Calculations for Application: 10/762577**

Application Filing Date:	01/23/2004	PTO Delay (PTO):	967
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	24
Post-Issue Petitions:	0	Total PTA (days):	942
PTO Delay Adjustment:	-1		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
51	01/07/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		25	
50	01/07/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	24		
49.5	07/30/2008	PTA 36 MONTHS			
49	08/19/2008	PATENT ISSUE DATE USED IN PTA CALCULATION			
48	07/14/2008	PETITION ENTERED			
47	07/23/2008	EXPORT TO FINAL DATA CAPTURE			
46	07/22/2008	DISPATCH TO FDC			
45	07/17/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
44	07/14/2008	ISSUE FEE PAYMENT VERIFIED			
43	07/14/2008	ISSUE FEE PAYMENT RECEIVED			
42	06/05/2008	FINISHED INITIAL DATA CAPTURE			
40	05/05/2008	EXPORT TO INITIAL DATA CAPTURE			
39	05/02/2008	MAIL NOTICE OF ALLOWANCE			
38	05/01/2008	ISSUE REVISION COMPLETED			
37	05/01/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
36	05/01/2008	DOCUMENT VERIFICATION			
35	04/28/2008	NOTICE OF ALLOWABILITY			
34	04/18/2008	DATE FORWARDED TO EXAMINER			
33	03/10/2008	RESPONSE AFTER NON-FINAL ACTION		24	31
32	03/10/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
31	11/15/2007	MAIL NON-FINAL REJECTION	967		-1
30	11/13/2007	NON-FINAL REJECTION			
29	06/23/2004	INFORMATION DISCLOSURE STATEMENT			

CONSIDERED			
26	06/27/2007	CASE DOCKETED TO EXAMINER IN GAU	
25	10/17/2006	CASE DOCKETED TO EXAMINER IN GAU	
24	10/10/2006	CASE DOCKETED TO EXAMINER IN GAU	
23	10/10/2006	CASE DOCKETED TO EXAMINER IN GAU	
22	10/05/2006	CASE DOCKETED TO EXAMINER IN GAU	
21	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU	
20	01/27/2006	CASE DOCKETED TO EXAMINER IN GAU	
19	09/25/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE	
18	06/23/2004	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)	
17.7	06/23/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED	
17	06/23/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED	
16	06/23/2004	PRELIMINARY AMENDMENT	
15	09/25/2004	CASE DOCKETED TO EXAMINER IN GAU	
14	07/14/2004	APPLICATION RETURN FROM OIPE	
13	07/14/2004	APPLICATION RETURN TO OIPE	
12	07/14/2004	APPLICATION DISPATCHED FROM OIPE	
11	07/14/2004	APPLICATION IS NOW COMPLETE	
10	06/23/2004	PAYMENT OF ADDITIONAL FILING FEE/PREEEXAM	
9	06/23/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC	
8	06/23/2004	TRANSLATION OF CLAIMS INTO ENGLISH	
7	06/23/2004	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS	
6	06/23/2004	TRANSLATION OF SPECIFICATION INTO ENGLISH	
5	04/27/2004	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED	
4	03/22/2004	CLEARED BY L&R (LARS)	
3	03/09/2004	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR	
2	01/31/2004	IFW SCAN & PACR AUTO SECURITY REVIEW	
1	01/23/2004	INITIAL EXAM TEAM NN	

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